information presented after the designation order is adopted establishes that there is no substantial question of fact requiring a hearing on the issue.[12] Both tests are met in this case.

A. THE COUNSEL'S REPORT IDENTIFIED MR. WITSAMAN AND REPEATEDLY DISCLOSED HIS KNOWLEDGE OF THE WRONGDOING.

The *HDO* is simply incorrect in stating that the October 15 Counsel's Report failed to disclose the role of Mr. Witsaman or his knowledge of the wrongdoing.

At the outset, we may dispose quickly of the HDO's allegation that the Counsel's Report failed to disclose that an "employee" mentioned in the report as having been aware of the Company's ongoing illegal practices and as having questioned the propriety of the false filings with the Company's then Chief Operating Officer was "a corporate officer of MobileMedia." The apparent assumption underlying this finding in paragraph 3 is

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(...continued)
information before it at the time of designation").

[12]See WOIC, Inc., 44 F.C.C. 2D 891, 892 (1974) (issue deleted in face of affidavits from applicant satisfactorily explaining the matter in question).

that the "employee" referred to at this portion of the Counsel's Report was Mr. Witsaman, since Mr. Witsaman is a former BellSouth employee and the employee in question was identified as a former BellSouth employee.

In fact, the portion of the Counsel's Report forming the basis for the HDO finding described above did not refer to Mr. Witsaman, but to Todd Wheeler, a MobileMedia employee who was not a corporate officer. While the erroneous conclusion in the HDO is understandable -- both Mr. Witsaman and Mr. Wheeler were former BellSouth employees and Mr. Wheeler was not identified by name in the portion of the Counsel's Report quoted in paragraph 3 of the HDO -- the attached Declaration of Wiley, Rein & Fielding attorney, Christopher D. Cerf, and the attached October 8, 1996 memorandum of his September 30, 1996 interview with Mr. Wheeler show conclusively that the employee referred to in the portion of the report cited in HDO paragraph 3 was Mr. Wheeler, not Mr. Witsaman. The HDO's finding of a failure to disclose was in this respect thus based on a mistake of fact.

It is also clear that the Counsel's Report did identify Mr. Witsaman and his position in the Company, and fully disclosed his

knowledge of the false application filings. While no one was identified by name in the report's narrative section, the exhibits attached to the report included detailed information about the named individuals who had been directly responsible for the wrongdoing and about additional persons who had knowledge of it. Among the persons identified as having had knowledge of the wrongdoing was Mark Witsaman.

Exhibit 2 to the Counsel's Report clearly identifies Mr. Witsaman by name, identifies him as MobileMedia's "Senior Vice President/Chief Technology Officer," and reports that he was interviewed in the investigation. The same part of the report also contains an organizational chart which again identifies Mr. Witsaman and his position inside the Company. The Counsel's Report also clearly discloses that Mr. Witsaman had knowledge of the wrongdoing.[13] Exhibit 12 of the report includes a February 27, 1996 memo of a meeting at which the filing of false 489 forms had been discussed. That memo shows explicitly on its face that it was prepared by Mr. Witsaman and is also identified as having

[13]Indeed, the report reveals that Mr. Witsaman was one of MobileMedia employees who had knowledge of the wrongdoing -- all of whom were interviewed by investigating counsel.

been prepared by Mr. Witsaman in a covering handwritten note written by the Company's former Regulatory Counsel, also included in Exhibit 12.

At least three other documents submitted as part of the Counsel's Report identify Mr. Witsaman as someone who knew of the wrongdoing. These documents include (1) a memorandum from Mr. McVay to Messrs. Bernthal and Goldman in which, for example, Mr. McVay refers to a December 1995 or January 1996 conversation with Mr. Witsaman regarding the wrongdoing.[14] (2) a memorandum dated August 22, 1996 from Mr. McVay to Mr. Bayer which refers to a

> subsequent conversation several months later with Witsaman regarding Gene (Mark [Witsaman] and I spoke several times concerning Gene's frustration with the lack of communication between the corporate network group and Gene): "BellSouth lawyer would never take risks that Gene would take" (unfortunately, I did not understand Mark to mean this incident or anything of this magnitude)[.][15]

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[14]Counsel's Report, Exhibit 8, McVay "FCC 489 Outline" dated August 27, 1996, at ¶1(b)(i)(1).

[15]Counsel's Report, Exhibit 8, McVay Memorandum to David Bayer dated August 22, 1996, at ¶4(c).

and (3) a February 8, 1996 memorandum from Mr. Belardi to Mr. Witsaman in which Mr. Belardi asks for Mr. Witsaman's help in identifying outstanding construction permits that "we should cover with the filing of a Form 489" and says that the Company "should file as many Forms 489 as possible and as quickly as possible."[16] Additionally, as noted above, Exhibit 12 also contains an August 30, 1996 note from Mr. Belardi to investigating counsel in which Mr. Belardi explains that the document is "Mark's memo which lists all the action items that were identified as a result of my briefing . . . Item 9 reflects the 489 filing project. . . ."[17]

The HDO's "non-disclosure" allegations with respect to Mr. Witsaman are particularly inappropriate in light of the fact that the October 15 Counsel's Report was not submitted in a vacuum but rather as part of a lengthy and continuing process of disclosure and dialogue with the Wireless Telecommunications Bureau. On November 20, 1996, for example, the Company submitted to the Bureau Latham & Watkins' "Preliminary Report to the Company's

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[16] Id. at Exhibit 9.

[17] Id. at Exhibit 12.

Board of Directors" dated September 18, 1996, waiving the privileged nature of the report. That report included a full paragraph devoted to the role and possible culpability of the Chief Technology Officer, who had previously been identified as Mr. Witsaman.[18]

Indeed, information furnished by the Company led to further inquiries from the staff about Mr. Witsaman, and the Company cooperated in making him available for a deposition by the Bureau. As reflected in the attached Bernthal Declaration,

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[18]Attachment A to letter dated November 20, 1996 to Gary P. Schonman, Esq. from Latham & Watkins and Wiley, Rein & Fielding, at pp. 23-24. The relevant portion of the Report stated:

> 4. Role of Chief Technology Officer
>
> Finally, the Chief Technology Officer can be criticized for failing to speak out against the proposal given familiarity with FCC Form 489. In fairness, however, this fact is greatly mitigated by his newness to the Company. Moreover, the Chief Technology Officer was confronted with a proposal advanced by Regulatory Counsel, tacitly endorsed by the General Counsel, and approved by Senior Management. Given this context, his acquiescence is somewhat understandable. The Chief Technology Officer may also be criticized for failing to quantify and budget for the commitment represented by the filings. This inattentiveness allowed the issue to lay dormant for a number of months and kept other members of senior management from appreciating its significance. Again, however, it appears that the Chief Technology Officer took his lead from other members of senior management."

MobileMedia's counsel orally disclosed the Company's personnel deliberations regarding Mr. Witsaman to the Bureau staff; counsel explained the reasoning behind the decision to keep him in the Company's employ; and counsel specifically invited the Bureau to reflect upon the Company's decision and advise the Company if the Bureau felt differently. These communications were made directly by counsel to the Bureau and in a further detailed written presentation made January 31, 1997 that set forth the factors leading to the Company's decision not to terminate Mr. Witsaman's employment even though he had been aware of the false Form 489 filings.[19] In the context of this total and continuing process of communication between the Bureau and counsel for the Company, no intent to conceal Mr. Witsaman's role can reasonably be inferred. See Intercontinental Radio, 56 RR 2d 903, 926 (Rev. Bd. 1984).

[19]January 31, 1997 letter to Michelle C. Farquhar and William E. Kennard from Robert L. Pettit and Eric L. Bernthal, et al., at 7-8.

B. THE SOLE PURPOSE OF THE COUNSEL'S REPORT WAS TO PROVIDE COMPLETE AND FULLY CANDID DISCLOSURE TO THE COMMISSION. THERE IS NO BASIS FOR SUGGESTING THAT ITS INTENT WAS TO MISLEAD.

As shown above, Mark Witsaman's position at MobileMedia and his knowledge of the false Form 489 filings were fully disclosed in the Counsel's Report and were subsequently the subject of discussions with and submissions to Bureau staff. What remains is the wording of the October 15 Counsel's Report as it related to Mr. Witsaman.[20]

The HDO focuses on two statements in the Counsel's Report: (1) that the Company had "terminated the employment of responsible senior management personnel" and that "none of the members of senior management involved in the derelictions -- either directly or as a matter of responsibility -- remain

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[20]The wording of the October 15 Counsel's Report is unrelated to the substantive question of whether Mr. Witsaman's employment should have been continued by MobileMedia. The reasoning that led to the Company's decision to retain Mr. Witsaman was described in the January 31 submission and was discussed with Bureau staff. The Commission may agree or disagree with the Company's decision as to where it should have "made the cut" in deciding which staff members to terminate -- a matter about which the Bureau's views were invited prior to issuance of the HDO -- but this is not an issue that involves any question of candor or non-disclosure.

employed by the Company" and (2) that "other lower-level employees should not be disciplined simply for their awareness of [the false filings]."

This October 15 Counsel's Report was prepared by counsel. At the time the report was prepared, the facts were as follows: (1) the person in the Company who had conceived of the plan to prepare the false reports and had prepared, signed and filed them had been terminated, (2) the person to whom the preparer of the false reports reported, the Company's General Counsel, had also been terminated and (3) the two senior corporate officers to whom the General Counsel reported, the former Chief Operating Officer and former Chief Executive Officer, both of whom were reported by others to have had knowledge of the filing of the false reports at the time they were being filed and who had apparently condoned the filings, had left the Company before the derelictions were discovered. Additionally, others in the Company (below the level of the Chief Operating Officer and Chief Executive Officer) who had known of the filing of the false reports but who had not participated in the filings and who had no supervisory responsibility over anyone directly responsible for the false filings, had not been terminated.

As stated in the Declarations of Eric L. Bernthal and Robert L. Pettit, no one involved in preparing the report had any intent to convey any information other than the facts set forth above in the Counsel's Report. As stated in each of the Declarations, there was no intent on the part of anyone involved in preparing the report to conceal any facts with respect to Mr. Witsaman.

Could the facts in the two sentences in question have been more clearly stated in the report? Certainly that is arguable. The fact that the reference to "lower-level" employees who had only known of the false filings was intended to include everyone below the CEO/COO level might have been more clearly stated and a less generic term than "as a matter of responsibility" might have been used to say exactly what is set forth in the immediately preceding paragraph of this motion. But it is a far leap from questioning whether particular language was "lacking in clarity or could have been more artfully drawn"[21] to an unwarranted conclusion that the language represented an attempt to deceive the Commission.

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[21] Southern Broadcasting Co., supra, at 1112.

That is particularly the case here because the sentences in question cannot be read in isolation from the rest of the investigative process. The facts relevant to the statements in question were included in the report, and Mr. Witsaman's status was the subject of further filings and discussions with Bureau staff. See attached Bernthal Declaration.

All of these reports and discussions reflected the decision made by the Company as soon as the false filings were discovered that full disclosure would be made to the Commission of all relevant facts. See Bernthal Declaration. When Wiley, Rein & Fielding joined the investigation, that firm concurred completely with that decision. See attached Declaration of Richard E. Wiley. Having embarked on that course, the Company and every attorney involved in the investigation were acutely aware that the only acceptable way to respond to derelictions as substantial as those discovered here would be to prepare and present to the Commission a complete and absolutely candid report stating what had happened, how it had happened, who had been responsible, and the measures the Company would take to insure that similar derelictions could never happen again. See the attached Wiley, Pettit and Bernthal Declarations. It is patently unreasonable

for the HDO to suggest that the experienced and highly reputable attorneys involved in this process would abandon this purpose and deliberately attempt to mislead the Commission on a peripheral issue involving a single employee.

III. CONCLUSION

The facts summarized and analyzed above and the attached Declarations show clearly that inclusion of the paragraph 14(b) issue in this proceeding was based on mistakes of fact and a less than complete reading of the Counsel's Report. The Commission should therefore delete the issue, as it has done in prior cases involving analogous circumstances. Upon a determination that the issue should be deleted, we further request that the Commission immediately issue a public notice of that result, with the Commission's opinion to follow at a subsequent date. Such expedited action is necessary in view of the extraordinarily accelerated hearing schedule and the very substantial preparation

presently underway for trial of matters pertaining to the paragraph 14(b) issue.

Respectfully submitted,

MOBILEMEDIA CORPORATION

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Arthur B. Goodkind
Koteen & Naftalin, L.L.P.
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Suite 1000
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(202) 467-5700

Its Attorneys

May 21, 1997

DECLARATION OF ERIC L. BERNTHAL

I am a partner with the law firm of Latham & Watkins, 1001 Pennsylvania Avenue, N.W., Washington, D.C. and a member in good standing of the District of Columbia Bar. I have practiced communications law before the Federal Communications Commission continuously for almost 25 years.

I was the initial Latham and Watkins Communications attorney involved in the investigation and reporting of the application filing violations by MobileMedia Corporation and its subsidiaries ("MobileMedia" or "the Company") that are now the subject of an FCC hearing in WT Docket No. 97-115. In the very earliest stages of the investigation, the extent and gravity of the violations became apparent to me and to the Company's board of directors. I recommended, and the Company's directors agreed, that we would conduct a complete, no-holds-barred inquiry into the wrongdoing that had occurred, that we would identify the persons responsible for it so that the Company could deal with them appropriately, and that we would report the complete results of the investigation to the Federal Communications Commission as quickly as possible.

On September 4 and September 26, 1996, I met with Michelle C. Farquhar, then Chief of the Wireless Telecommunication Bureau, to advise her of our preliminary findings, promising that our written report would be filed as rapidly as possible. This disclosure was made entirely at the Company's initiative and to the best of my knowledge was the first knowledge imparted to the Commission about the false application filings. On October 15, 1996, we filed our investigative report. It was the first of many filings in which we continued to provide information as part of our ongoing dialogue with the Bureau.

At the time the report was submitted, the Company's Regulatory Counsel, who had been responsible for conceiving the plan to file false applications and who had prepared, signed and filed the applications, had been terminated. The person next above him in the chain of command, the Company's General Counsel, who had known of the false filings, had also been terminated. It had been reported to us in the investigation that the next two persons up in the corporate hierarchy, the Company's former Chief Operating Officer and Chief Executive Officer, had also known of the false filings and had endorsed them. Those two persons had

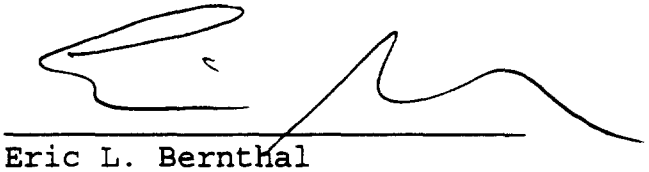
already left the Company before the false filings were discovered. Our investigation had also determined that there were other employees who had only known of the false filings, but who had not taken part in the filings themselves or been in the chain of command above the person who did the filings. A decision had been made by the Company not to terminate such employees who had only known.

I am familiar with the language in the October 15 Counsel's Report relating to the matters above that has been characterized as misleading in paragraphs 3 and 10 of the hearing designation order in WB Docket No. 97-115. I regret that the Commission has interpreted that language to mean anything other than the facts stated in the previous paragraph. Neither I nor, to my knowledge, anyone else involved in preparing and submitting the report had any intention other than to state those facts and we certainly had no intent to conceal the fact that Mark Witsaman, the Company's Senior Vice President/Chief Technology Officer, was one of the persons who had known of the false filings. Indeed, the October 15 Report itself clearly revealed the knowledge of Mr. Witsaman (among other employees) and Mr. Witsaman's position in the Company. Any such attempt to mislead the Commission or to be less than fully candid as to this or any other matter would have been totally at odds with what had been the entire purpose of our investigation and disclosure effort.

Moreover, the October 15 Report was also only one of numerous submissions to and discussions with the Wireless Telecommunications Bureau's staff concerning all aspects of the investigation, including specifically Mr. Witsaman and the Company's decision to continue his employment.

From the outset, we urged the Bureau to alert us to any questions it might have concerning any aspect of the investigation or our submissions. Mr. Witsaman's possible culpability and the Company's decision to retain him were specifically addressed in filings made on November 20, 1996 and January 31, 1997. I also explicitly raised and discussed these subjects in face-to-face meetings with the Bureau staff and actively sought the staff's views as to the appropriateness of the Company's decision not to terminate Mr. Witsaman.

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge and belief.



Eric L. Bernthal

May 21, 1997

DECLARATION OF ROBERT L. PETTIT

I am a partner in the law firm of Wiley, Rein & Fielding in Washington, DC. and a member in good standing of the District of Columbia Bar. I have been engaged in the practice of law since 1977, both as a private attorney and in the public sector.

In my government capacities, I have been involved in a number of internal and external investigations. Accordingly, I have a keen appreciation both of the conduct of investigations and of the need for accuracy in all reports filed with a federal agency.

I participated in the investigation and reports to the FCC that preceded issuance of the hearing designation order concerning MobileMedia Corporation, et al., WT Docket No. 97-115. I first became involved with this matter on September 20, 1996, and participated actively thereafter in numerous meetings and other communications with the Wireless Telecommunications Bureau, the Office of the General Counsel and the offices of FCC Commissioners.

From the time I first became involved in the investigation, I understood its purpose to be to develop a complete factual record as to the false application filings by MobileMedia, to report our findings to the FCC, and to report remedial measures the company had taken and proposed to take to prevent recurrence of any wrongdoing. I understood this to include a description of personnel actions taken by the Company.

In our meetings and other communications with the Wireless Telecommunications Bureau, we repeatedly reaffirmed our intention to supply any and all information that the Bureau deemed relevant. We repeatedly offered to answer any questions that might arise, including questions resulting from any information filed during the course of the investigation. See, for example, the attached E-mail dated November 15, 1996, from me to the Bureau's Deputy Chief. We repeatedly offered to make our employees and records available to the Commission. Moreover, we repeatedly offered to do what we could to help secure the availability of former employees of the company.

As a result of this effort, we voluntarily made available to the Bureau for formal depositions (as requested by the Bureau) the six members of the Board of Directors and Mr. Witsaman. We also helped secure the voluntary testimony of the Company's former Chief Operating Officer and pledged to do what we could to help the Commission gain the testimony of the Company's former General Counsel and former Regulatory Counsel. We provided the names and addresses of current and former employees and directors (as requested by the Bureau). Indeed, to my knowledge, at no time did the Company refuse to make any employee available to the Commission.

In addition, we made available hundreds of pages of documents (both on our own and at the request of the Commission staff). Here, again, while we certainly had discussions regarding the scope of the document production requests, to my knowledge there is no document that we refused to make available to the Commission.

Numerous questions were raised by various Commission staff members. On each of these occasions, we endeavored to answer the questions as completely as we could as we understood them and within the time that we were given by the Commission staff. Again, to my knowledge there was no question that we refused to answer or fact that we refused to provide.

I reviewed all or most of the written filings made with the FCC concerning the investigation, including the October 15 Counsel's Report. At the time the report was submitted, the Company's Regulatory Counsel, who had been responsible for conceiving the plan to file false applications and who had prepared, signed and filed the applications, had been terminated. The person next above him in the chain of command, the Company's General Counsel, who had known of the false filings, had also been terminated. It had been reported to us in the investigation that the next two persons up in the corporate hierarchy, the Company's former Chief Operating Officer and Chief Executive Officer, had also known of the false filings and had endorsed them. Those two persons had already left the Company before the false filings were discovered. Our investigation had also determined that there were other employees who had only known of the false filings, but who had not taken part in the filings themselves or been in the chain of command above the person who

did the filings. A decision had been made by the Company not to terminate such employees who had only known.

I am familiar with the language in the October 15 Counsel's Report relating to the matters above that has been characterized as misleading in paragraphs 3 and 10 of the hearing designation order in WB Docket No. 97-115. I regret that the Commission has interpreted that language to mean anything other than the facts stated in the previous paragraph. Neither I nor, to my knowledge, anyone else involved in preparing and submitting the report had any intention other than to state those facts and we certainly had no intent to conceal the fact that Mark Witsaman, the Company's Senior Vice President/Chief Technology Officer, was one of the persons who had known of the false filings. Indeed, the October 15 Report itself clearly revealed the knowledge of Mr. Witsaman (among other employees) and Mr. Witsaman's position in the Company. Any such attempt to mislead the Commission or to be less than fully candid as to this or any other matter would have been totally at odds with what had been the entire purpose of our investigation and disclosure effort.

Although we had numerous discussions with the Commission staff and, as stated above, answered numerous questions from the Commission staff, at no time during the course of the Bureau's investigation do I recall anyone at the FCC calling into question the accuracy of the October 15 Counsel's Report. More particularly, at no time do I recall anyone at the FCC suggesting that the report failed to reflect Mr. Mark Witsaman's knowledge of the wrongdoing or his status as an officer of the Company. Indeed, I believed that these facts were clearly reflected in the report.

I hereby declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge and belief.

Robert L. Pettit

5/21/97

(Date)

To: RALLEN @ FCC.GOV @ SMTP
cc:
From: Robert Pettit/WRF
Date: 11/15/96 09:45:24 AM
Subject: MobileMedia

Roz: Thanks, again, for the meeting yesterday. As we indicated yesterday, we stand ready to cooperate in any way we can. I have a call in to Howard to start working on the deposition schedule for the directors; I think that they could all be available within the next several days. In addition, I have talked to one of my partners who does white collar criminal work (Chris Cerf - who until a short time ago worked with Kathy Wallman at the White House counsel's office), and will offer to meet with Peter to see if we can offer any help there. Also, to the extent that there are any remaining factual questions, we are obviously anxious to answer those, too. By the way, feel free to contact me any time about whatever you need -- or if you run into any problems in your investigation. My office number is: 429-7019. My secretary's (Twanna Johnson) number is: 828-3251. My home number is: 202-237-2572. My cellular number is: 202-321-1733. My pager number is: 202-896-0248.

DECLARATION OF RICHARD E. WILEY

I am a partner in the law firm of Wiley, Rein and Fielding, 1776 K St., N.W., Washington D.C. and a member in good standing of the District of Columbia Bar. I have been engaged in the practice of law since 1958, both as a private attorney and in the public sector.

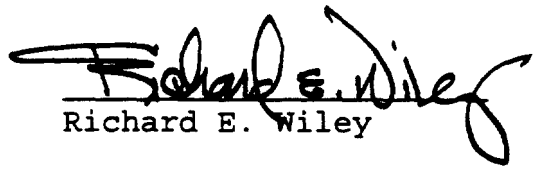
On September 20, 1996, our firm was engaged to act as co-counsel with respect to the investigation and reports made to the Federal Communications Commission that preceded issuance of the hearing designation order concerning MobileMedia Corporation, et al., WT Docket No. 97-115. At the time our firm was engaged, the investigation of MobileMedia's false application filings by Latham & Watkins had been underway for a month, and Latham and Watkins had already made an initial report to the Company's Board of Directors. I understood that a decision had previously been made by the Company's Board Chairman and Latham & Watkins to conduct a thorough investigation of the wrongdoing that had occurred and to report to the FCC all of the findings of that investigation as well as remedial steps, including personnel actions and the institution of a compliance program, that had been taken and were to be taken by the Company.

Upon reviewing the facts, it was clear to me that the course of action the Company had undertaken was the only acceptable way to proceed. I concurred completely with the recommendations that Latham & Watkins had made to the Board with respect to the investigation and the report that was to be made to the FCC concerning the investigation. In my discussions with the other attorneys of both firms who participated in this effort, it was always clear to me that everyone understood the absolute need for complete and candid disclosure to the FCC in any case of this nature. To the best of my knowledge, all of our filings were fully consistent with this guiding principle.

I personally participated in meetings with Wireless Telecommunications Bureau staff concerning the MobileMedia investigation. At these meetings, we expressed the Company's desire to cooperate fully with the Bureau in developing any and all information they believed to bear on the Company's wrongdoing. We invited questions from the Bureau concerning any aspect of the matter or about any of the materials we had filed. To the best of my knowledge, we always responded fully to such questions. During the course of the investigation, the Company

and counsel frequently waived attorney-client privilege and attorney work product privilege in order to present specific documents to the Commission.

I hereby declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Richard E. Wiley

May 21, 1997

Date)

DECLARATION OF CHRISTOPHER D. CERF

I am a partner in the law firm of Wiley, Rein & Fielding, Washington, D.C. and a member in good standing of the District of Columbia Bar. I have been a member of the bar since 1986, engaged in the practice of law in both the public and private sector.

I participated in the investigation of MobileMedia Corporation, et al. ("the Company"), and reviewed the report to the FCC that preceded issuance of the hearing designation order, WT Docket No. 97-115. On September 30, 1996, in connection with that investigation, I interviewed Todd Wheeler, Senior Director of Network Planning for the Company. Also participating in the interview were Davida Grant, an associate at Wiley, Rein & Fielding, and Michael Guzman, an associate at Latham & Watkins. Following the interview, Ms. Grant prepared the attached memorandum of the interview dated October 8, 1996 for my review. I did review the memorandum, which, to the best of my recollection, accurately recounts the substance of the interview.

As shown at page 3 of the memorandum, Mr. Wheeler advised us that in a conversation with John Kealey (the COO) he had questioned the appropriateness of filing inaccurate Forms 489. Wheeler further stated to Kealey that, based on Wheeler's prior experience at BellSouth, "you could not file deficient forms." Mr. Wheeler, who was not an officer of the Company, was the employee referred to at page 14 of the October 15, 1996 Counsel's Report filed on behalf of the Company with the Federal Communications Commission. A comparison of the language on page 3 of the Wheeler interview memorandum and the passage on page 14 of the October 15 report demonstrates clearly that the referenced individual was Mr. Wheeler and not Mr. Witsaman.

I declare under penalty of perjury that the foregoing statement is true and correct to the best of my knowledge and belief.

Christopher D. Cerf

May 21, 1997

WILEY, REIN & FIELDING

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MEMORANDUM

Privileged & Confidential
Attorney Work Product
Prepared in Anticipation of Litigation

TO: Michael Guzman

FROM: Wiley, Rein & Fielding

DATE: October 8, 1996

RE: Interview of Todd Wheeler

We interviewed Todd Wheeler on September 30, 1996. The interview lasted approximately one hour. We informed Todd that the law firms of Wiley, Rein & Fielding and Latham & Watkins are both counsel for Mobile Media. Thus, the attorney-client privilege protecting this conversation belonged to the company and not to him. Todd indicated that he understood.

Todd is the Senior Director of Network Planning. He has been an employee of MobileComm for approximately 12 years. After the merger of Mobile Media and MobileComm, Todd remained with the company. Todd's responsibilities include generating a one to three-year prospectus for the company regarding spectrum expansion, providing a capacity analysis,

projecting sales growth, managing telecommunications, and creating and managing the capital budget.

Todd said he met Gene Belardi in February of 1996. According to Todd, Gene called a meeting to discuss the FCC's license freeze and how to best prepare for the new auction process. He said they discussed frequency planning, frequency strategy and the FCC's filing fee.

Todd said that prior to the February Spectrum Planning meeting, he does not recall any discussions regarding "covering" 489s. Todd said that, at that time, he was focused solely on where the company was and where it was going. He said the 489 issue may have been discussed at the February meeting, but he does not recall.

Todd said that during the February time period, he knew that the company had numerous construction permits, but he did not recall knowing that the permits were about to expire. Todd said, "Don't recall seeing any CP expiration points."

Todd stated he remembers John Kealy coming down to the Jackson office and discussing CPs that were filed. Todd said that Kealy said the company needed to go back and construct. Todd said that he and Kealy discussed the budget and the need to "go back and fulfill the licenses."